

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH B. PUERTAS, STEVEN PUERTAS,
CHRISTOPHER PUERTAS, MICHAEL
MAZZA, STEPHANIE PUERTAS, RICHARD
PUERTAS and NANCY PUERTAS,

UNPUBLISHED
May 2, 2006

Plaintiffs-Appellants,

V

DAVID G. GORCYCA,

No. 262783
Oakland Circuit Court
LC No. 2004-057350-NO

Defendant-Appellee.

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court order granting summary disposition in favor of defendant. We affirm.

Plaintiffs filed their complaint in this matter alleging a cause of action for defamation against defendant Oakland County prosecuting attorney. Plaintiffs assert that defendant defamed them by referring to their family as “corrupt” while speaking to a newspaper reporter regarding the settlement of forfeiture proceedings brought pursuant to the controlled substances act, MCL 333.7521 *et seq.*, and the criminal enterprises act, MCL 750.159m *et seq.* Plaintiffs also assert that defendant acted untruthfully when he stated that plaintiff Joseph B. Puertas had “forfeited” \$1.5 million to the Internal Revenue Service as part of a settlement agreement, and that defendant misrepresented the truth by referring to “the Puertas family,” when not all members of the family had been named in the forfeiture proceedings. Finally, plaintiffs assert that defendant had untoward motives for speaking to the press, purposely seeking to excoriate them.

The trial court granted summary disposition for defendant pursuant to MCR 2.116(C)(7), determining that defendant was immune from tort liability under MCL 691.1407(5). We review an order granting summary disposition under MCR 2.116(C)(7) de novo. *Pusakulich v City of Ironwood*, 247 Mich App 80, 82-83; 635 NW2d 323 (2001). The applicability of governmental immunity is reviewed de novo as a question of law. *Cain v Lansing Housing Comm*, 235 Mich App 566, 568; 599 NW2d 516 (1999).

High ranking government officials are afforded broad tort immunity when acting within the scope of their executive authority. MCL 691.1407(5); *American Transmissions, Inc v Attorney General*, 454 Mich 135, 143; 560 NW2d 50 (1997). This immunity applies to prosecuting attorneys. *Bischoff v Calhoun Co Prosecutor*, 173 Mich App 802, 806; 434 NW2d 249 (1989). The determination of whether particular acts are within an official's authority depends on a number of factors, including the nature of the specific acts alleged, the position held by the official, the law defining the official's authority, and the structure and allocation of powers in the particular level of government. *American Transmissions, supra* at 141.

Prosecuting attorneys have broad powers to prosecute and defend both civil and criminal actions. MCL 49.153. In addition, prosecutors have the authority to maintain forfeiture proceedings under the Michigan criminal enterprises act, MCL 750.159n, and under the controlled substances act, MCL 333.7523(1). Moreover, prosecutors may perform other duties necessary to carry out their functions. *In re Jagers*, 224 Mich App 359, 364; 568 NW2d 837 (1997).

Plaintiffs argue that defendant was not entitled to immunity because his comments to the press were not within the scope of his executive authority. Plaintiffs contend that even if defendant had the authority to comment on the underlying forfeiture proceedings, he lacked the authority to comment on the \$1.5 million tax payment related to the resolution of the forfeiture matter. We disagree.

Defendant clearly had the authority to comment on the forfeiture proceedings themselves. MCL 750.159n; MCL 333.7523(1). Thus, we must determine whether the discussion of plaintiff Joseph B. Puertas' related tax payment stripped defendant of his authority. In *American Transmissions, supra*, our Supreme Court held that speaking to a television news reporter regarding a past investigation was within the scope of the Attorney General's executive authority. *American Transmissions, supra* at 144. The Attorney General granted a television interview at which he defended an investigation undertaken by his office. During the interview, the Attorney General referred to the plaintiff's auto repair facilities as "fraudulent," "crooks," "crooks and cheats," and "crooked transmission shops." *Id.* Our Supreme Court held that the Attorney General had been acting within the scope of his executive authority when he made the allegedly defamatory statements. *Id.* at 144.

In the present case, the trial court applied the rule of *American Transmissions, supra*, determining that defendant was similarly within his executive authority when he spoke to the press. Plaintiffs argue that *American Transmissions, supra*, is distinguishable because defendant's statements dealt with a federal tax matter that was outside his authority as Oakland County prosecutor. This is a difference without distinction. The relevant inquiry is not whether every comment made related to a function specifically authorized by law. Rather, the relevant inquiry is whether defendant had the general authority to comment regarding a matter related to the underlying forfeiture proceedings. The fact that an official comments on a subject that is not included in the statute or law granting his authority does not necessarily imply that the official is without authority to make the comment. "[T]here is no authority for the finding that the

prosecutor may perform only those duties specifically assigned to him in the statutes and court rules.” *In re Jagers, supra* at 364. Here, plaintiff Joseph B. Puertas’ agreement to pay the IRS \$1.5 million was part and parcel of the resolution of the underlying forfeiture proceedings. The very nature of defendant’s position implies the authority to comment on related matters, whether criminal or civil, that are uncovered during criminal investigations. Because defendant had the authority to comment on the forfeiture proceedings, he necessarily had the authority to comment on matters directly associated with the resolution of those proceedings as well.

Plaintiffs next argue that governmental immunity does not apply because defendant knowingly made untruthful or exaggerated statements to the press. We disagree. There is no intentional tort exception to governmental immunity under MCL 691.1407(5). *Marrocco v Randlett*, 431 Mich 700, 710-711; 433 NW2d 68 (1988). Moreover, an official’s intent or motive in committing a tort is irrelevant. *American Transmissions, supra* at 143-144. Thus, even if defendant had purposefully uttered falsehoods in an effort to attack plaintiffs, his comments would still be immune so long as they fell within his executive authority. The truthfulness of defendant’s comments is simply immaterial to the question of immunity under MCL 691.1407(5).

Plaintiffs also argue that even if defendant’s comments regarding plaintiff Joseph B. Puertas were immunized by MCL 691.1407(5), his comments concerning “the Puertas family” were not. Specifically, plaintiffs argue that because defendant allegedly defamed members of the Puertas family who were not involved in the forfeiture proceedings, he exceeded the scope of his executive authority. The relevant inquiry is simply whether an official’s actions fell within the scope of his executive authority. MCL 691.1407(5); *American Transmissions, supra* at 143. In determining the scope of an official’s authority, it is necessary to examine the nature of the specific acts alleged, the position held by the official alleged to have performed the acts, the law defining the official’s authority, and the structure and allocation of powers in the particular level of government. *Id.* at 141. Notably absent from this list of factors, and thus immaterial to the question of governmental immunity, is the identity of individuals who are allegedly harmed by an official’s acts. Thus, plaintiff’s argument that defendant lacked immunity for his comments concerning “the Puertas family” is unavailing.

Plaintiffs finally argue that *American Transmissions, supra*, is distinguishable for the reason that defendant sought out the press in this case in order to purposefully slander or denigrate the Puertas family. However, any inquiry into defendant’s state of mind is foreclosed by our Supreme Court’s decision in *American Transmissions, supra*. Motive is not relevant to whether a government official has acted within the scope of his executive authority. *American Transmissions, supra* at 143-144. Nor is there a “malevolent-heart exception” to absolute governmental immunity under MCL 691.1407(5). *Id.* at 143. Therefore, even when a governmental official has acted for untoward purposes, governmental immunity applies so long as the actions were within the scope of the official’s authority.

Plaintiffs also suggest that while defendant affirmatively sought out the press in the present case, the Attorney General in *American Transmissions* did not seek out the television station that interviewed him. It is not clear whether the Attorney General sought out the television station or whether the television station sought out the Attorney General. However,

this supposed distinction is of absolutely no consequence. The ultimate decision to grant the interview cited in *American Transmissions* belonged to the Attorney General, just as the ultimate decision to speak to the press in this case belonged to defendant. Like the trial court in *American Transmissions*, the trial court in this case properly found that defendant was absolutely from liability for his comments to the media. *American Transmissions, supra* at 144.

Affirmed. We do not retain jurisdiction.

/s/ Helene N. White

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder